REMARKS

This paper is responsive to the nonfinal Office Action mailed April 25, 2007, relating to the above-identified application. The rejections are hereby traversed and issuance of claims 21 and 84–105 is respectfully and earnestly solicited for the reasons set forth below.

I. The Examiner's Rejections

Independent claim 21 and dependant claims 84–105 stand rejected under 35 U.S.C. § 103(a). Claims 84–95 and 98–105 stand rejected as unpatentable over U.S. Patent No. 5,509,064 to Welner in view of U.S. Patent No. 6,222,919 to Hollatz et al. Claims 96–97 stand rejected as unpatentable over Welner in view of Hollatz et al. in further view of U.S. Patent No. 5,890,492 to Elmaleh.

II. The Rejection Was Previously Presented

The Examiner has corrected an omission of entry of the Preliminary Amendment in this case. The gist of the current rejection was initially presented on February 10, 2006, to reject what was believed to be all of the claims then submitted for consideration, namely, claims 1–20, when claims 21 and 84–105 were the claims in the application at that time. Applicant provides remarks hereafter specifically directed to claims 21 and 84–105.

III. Applicant's Response

It is well established that to establish *prima facie* obviousness, (1) the modification or combination must teach all the claim limitations; (2) there must have been a teaching, suggestion, or motivation in the cited references to

modify or combine cited in the references at the time of the invention; and (3) there must have been a reasonable expectation of success when the combination or modification to the art was made (emphasis added). MPEP § 2141. Several of the key elements and limitations from Applicant's independent claim 21 are missing from the combination of references as shown by the Examiner.

Welner Does Not Query Users as to Their Desire for Counseling

Patients may undertake needed medical testing when promised anonymous treatment. Personal contact with a specialist in some cases is difficult for personal or logistical reasons. In rare cases, such as with HIV testing, unlike testing of sugar glucose level, giving negative test results over the telephone may result in grave situations for unaccompanied patients.

Welner et al. is directed to HIV testing. The devise shown in Figure 1 teaches how calls to patients with negative test results are treated only by automated answering services, and those patients with positive test results are automatically transferred to counselors.

> In accordance with the preferred embodiment, automated call handler and routing system 110 facilitates the providing of test results and counseling information to clients 120 either via recorded messages, or through live counselors and/or customer service representatives (CSRs) 140. Recorded messages are preferably used by call handler and routing system 110 for informing a client 120 of negative test results. Alternatively, in the case of clients 120 that tests positive or screen positive for the HIV virus, or whose test results are inconclusive, call handler and routing system 110 transfers the client-callers 120 to live counselors 140 who then inform clients 120 of their test results. (col. 4, ll. 4–14)

Welner allows users to key information into their telephone keypads, and based on the predetermined results of the individual test, gives a computer

automated response directly to patients with negative test results but connects

patients with positive test results to a counselor. The specification continues:

> Client-callers 120 who have tested positive or screen positive for the HIV virus, or whose test results were inconclusive, are transferred by call routing and handling system 110 to a counselor 140. Client-callers placing calls to call handler and routing system 110 in order to obtain general information about the at-home test kit or for other reasons are transferred by call handler and routing system 110 to a CSR for handling. (col. 4, ll. 58–65)

This last section explains how, once a kit test is purchased, a toll-free

number can be provided where test takers can call in for guidance during blood

pricking. At this stage, users have not yet submitted their tests and do not

have a code to enter. Welner never provides users with the option of speaking

to a counselor; the handling system 110 is programmed to always provide

counselor help when tests are positive and always provide counselor help when

a user is at home, preparing to use a blood-collecting device but unsure how to

use it.

Applicant's claim reads, "... querying said user as to whether said user

desired counseling ...." Applicant explains, "For instance, if a person who has

been tested for the human immunodeficiency virus (HIV) learns that he or she

has received a negative test for the virus, he or she may wish to obtain a record

of his or her test status for insurance or other purposes. Accordingly, in

accordance with this embodiment of the invention, the user may be queried as

to whether the user desires test result information to be identified with

information specific to the user" (para. [0007]). Paragraph [0006] is also explicit

that Applicant's device is not only directed at HIV testing but manages on the

test facility side large groups of requests. Applicant's invention contemplates the case where users choose not to speak with a counselor but are given results indifferent of their blood tests. Applicant's invention also allows all users to select if counseling is needed for a plurality of reasons. For example, negative test results given to a person who in fact expected a positive outcome of the test may also disturb individuals. Applicant's claims as written is not only directed to testing with positive/negative result. If a user is given cholesterol numbers, a counselor may help shed light on known limits for different age groups.

The Examiner writes, "The Examiner considers a caller trying to receive general information and then being transferred to a CRS equivalent to a user having a desire to be counseled." Applicant's claim is directed to a system that queries users as to whether counseling is desired. The Welner system does not query the user; it automatically transfers the call to the counselor before test results have been determined and can be given. In Welner, users are not queried about anything, and counseling may not be desired by the user.

The Hollatz Skill Groups Are Not Code Lots

Applicant's claim relates to (1) a personal identification code, (2) associated with a code database, (3) a plurality of codes, and (4) a code lot. The Examiner agrees that Welner fails to teach the use of code lots used in association with a user's personal identification code. However, the Examiner analogizes the "skill groups" shown in Hollatz as reading on Applicant's code lots.

Hollatz matches skills from users with skills of agents (col. 2, l. 35). Hollatz probes users via their telephone systems or questions and collects information as to the source of origin of the caller (col. 3, ll. 3–9). For example, an incoming call from France is associated with the skill "French speaker," and a call from Spain is associated with the skill "Spanish speaker" (col. 5, ll. 26–33). Users can also be asked to select a language. Agents of the Hollatz system are then selected and connected based on this language skill to handle incoming calls. If a caller calls from Quebec, the French-speaking province of Canada using the area code (514), then he may be directed automatically to a French-speaking agent. If the same person calls from the United States, he is directed to an English speaking agent by the same system.

The use of code lots by Applicant is fundamentally different in function, method of implementation, objective, and result from the use of skill sets by Hollatz. Applicant's system is anonymous, whereas Hollatz targets the user and his location as a means of collecting of information. Applicant explains how call centers may offer enhanced services by associating different users, working for a specific employer for example, with a code lot (para. [0005]).

Applicant's claim relates to "... determining whether said personal identification code input by said user corresponds to a code lot" and then "selecting a counselor associated with said lot." The personal identification code input is associated with a code lot and in turn associated with specific counselors. There is no skill involved and no analysis of any skill of the user or the counselor.

The Examiner argues that one of ordinary skill in the art would have found obvious that identification codes associated with a code lot could be associated with a handler as shown in Hollatz to improve the call distribution service. The leap between the use of a skill common to a user and a handler to forward calls to a skill personal to individuals is remarkably different from the use of an anonymous personal identification code indexed via a database to a code lot given for other purposes.

"The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process." MPEP § 2142. The Examiner suggests that grouping agents improves call centers in the absolute. It is the Examiner's duty to explain why the combination of the teachings is proper and better. *Ex parte Skinner*, 2 USPQ2d 1788 (BPAI 1986). What the Examiner suggests is to move away from Hollatz. Hollatz is a system that operates in the absolute for any caller from any location. Applicant's system is directed at a medical system where the user has been given an object and has returned a test specimen. The Examiner suggests that Hollatz must be construed in the following way. First, unlike what is disclosed, there needs to be no investigation about a user's location or skills. Second, counselors' skills need not be determined. Third, there needs to be no association between counselors' skills and user's skills. And lastly, the missing bridging element to associate users to specific counselors must be taken from an indexing database, indexed, and created from information at the disposal of users and given by the database creators.

Hollatz simply does not disclose the medical information-based systems, does not disclose the use of databases, and does not disclose any suggestion that users are anonymous and associated with counselors using external information unrelated to the agents. The motivation to combine given by the Examiner is insufficient to support the claim that Hollatz could be changed from read skills into code lots. Rather, as stated by the Examiner, the motivation in fact supports that call distribution systems benefit from grouping of agents. It does not suggest how to move away from skill-based grouping to code lot-based grouping.

Claim 21 provides that the code lot is associated with a code database that comprises a plurality of codes. Hollatz does not disclose any such indexing system. To the contrary, Hollatz discloses an actor-based system where people are matched, not numbers.

The Code Database Code Lots is Unrelated to Hollatz

The above argument applies with greater force to the Examiner's argument that claim 85 relates to a code database with a plurality of code lots. Hollatz discloses a queue of agents assigned to a specific skill, or by the Examiner's analogy, a queue of agents associated with what is believed to be code lots (col. 2, ll. 54–56). What is claimed is a specific type of database having very a specific type of information. The Examiner's analogy that storing the name or reference numbers of agents on standby queue is somehow related to the storage of code lots is wrong. What is disclosed is not even the storage of different skills associated with different agents. Hollatz does not disclose a code

database with a plurality of code lots. For this reason, the Examiner has failed to show how all elements and limitations of claim 85 are shown in the references.

No Reference to Common Codes is Made

Claim 86 relates to the situation where at least two of the code lots are exclusive or common lots. Applicant can be his own lexicographer. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576 (Fed. Cir. 1996). Applicant has defined exclusive and common lots in para. [0038]. The Examiner's rejection does not address this specific element (two code lots) and associated limitation (are exclusive of common lots). Therefore, the *prima facie* case in support of the rejection of claim 86 is improper and cannot be sustained. Allowance of claim 86 is respectfully solicited.

The Welner Routing System Is Not a Counselor

Claim 88 relates to the use of at least one live counselor and an automated counselor. Welner discloses counselors as element 140 as shown in Figure 1. The Examiner uses this reading in support of his rejection of claim 21. The Examiner now wants to reverse his understanding of what an automated call handler and routing system 110 is and transform this element into an electronic counselor. Figure 1 of Welner shows counselors 140 as different entities from the routing system 110. These elements as shown in the figures are not even connected by direct lines. The Welner specification goes on as follows:

> If the client-caller 120 has tested positive, screen positive or inconclusive
> for the HIV virus, a COUNSELOR call routing signal is sent from the host

computer 150 to system 110. Upon receipt of this signal, processing proceeds to step 264 where the call is transferred by system 110 to a counselor for handling. In step 264, the counselor reports the positive test result to client-caller 120. In step 264, the counselor may also provide counseling to the client-caller 120, answer questions posed by the client-caller 120 about the HIV virus and AIDs, and provide referral information to client0caller 120. (col. 9, ll. 31–41)

As explained above, Welner is a system designed to funnel all incoming calls from patients with positive HIV results to a human counselor. Unlike Applicant's device, which is able to offer counseling on glucose and other mild conditions, the suggestion by the Examiner that counseling of HIV victims under Welner is conducted electronically by the routing system 110 is not a reasonable interpretation of this invention. Welner does not disclose the use of automated counselors; it discloses the use of human counselors to help HIV victims. Claim 88 is directed to a device using both a live counselor and an automated counselor. Welner does teach the use of an automated counselor. Therefore, issuance of claim 86 is respectfully solicited.

Non-Lot-Specific Counselors are Absent from the Examiner's Analysis

Claims 91 and 92 are directed to the use of non-lot-specific counselors in association with the database. Applicant reasserts the claim demonstrated earlier that the art provided does not disclose lots or code lots. As a consequence, there can be no non-lot-specific counselors dedicated to some functions and lot-specific counselors dedicated to other functions. As a consequence, claims 91 and 92 are not properly rejected and must be allowed. Applicant respectfully solicits such action.

The *Prima Facie* Case of Obviousness of Claim 93 is Absent

The Examiner provides in support of the *prima facie* case of rejection of claim 93, stating that "A method according to claim 21, wherein said code database comprises a plurality of code lots, wherein at least one of said plurality of counselors is associated with plural code lots." The Examiner has reproduced Applicant's claim but has omitted any analysis. Assuming *arguendo* that code lots are to be analogized with the skills of Hollatz, there is no disclosure in any of the cited references of a database with code lots having any single agent with skills associated with a plurality of skills or lots. For this reason, claim 93 is in condition of allowance and such action is respectfully solicited.

No Common Counselor is Disclosed in Welner

Claim 98 is directed to the use of a common counselor who receives specific information and coordinates with other counselors. The Examiner does not direct Applicant to any portion of the Welner disclosure or any disclosure from the secondary reference Hollatz where an agent or counselor acts as a supervisor or coordinator. The claim that the CSR acts in this fashion corresponds to a claim that a counselor is acting in a certain way and not a common counselor. For this reason, the cited references cannot disclose what is claimed in claim 98. Claim 98 is therefore in condition of allowance and must issue. Such action is earnestly solicited.

The Examiner Misconstrues the Announcement Message of Welner

In support of the rejection of claim 101, the Examiner directs Applicant to col. 9, ll. 55–60 of Welner. This portion of the specification is directed to an ulterior message system made in a subsequent message. "If a determination is made in step 262 that a positive test result was reported to client-caller 120 during a previous call and during ..." (col. 9, ll. 43–45) (emphasis added). The suggested menu that directs users to a counselor relates to a subsequent call, not a function of the Welner device during the initial call as required to meet the Examiner's *prima facie* burden. For this reason, Applicant's claim 101 is not taught in the cited references and is in condition of allowance. Applicant earnestly solicits such action.

Environmental Testing Is Not Shown

Claim 97 stands rejected under a combination of Welner, Hollatz, and Elmaleh. This last reference shows how a plurality of blood-carried diseases can be tested analogously. Elmaleh does not disclose testing of environmental samples. The Examiner somehow equates hepatitis testing disclosure with disclosing environmental testing. The test of water samples having lead contamination is neither shown nor disclosed in either Welner, Hollatz, or Elmaleh. Claim 97 is in allowable condition and must be issued. Such action is earnestly solicited.
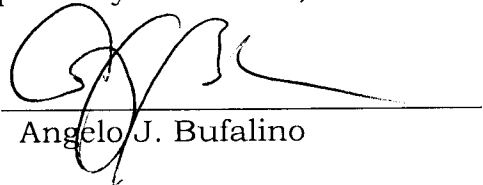
IV. Conclusion

Several of the elements and limitations of Applicant's claims are absent from the suggested combination of references presented by the Examiner in his

prima facie case of obviousness. In regard to independent claim 21 and *de facto* all dependant claims, Welner does not query users as to their desires for counseling. Rather, the system automatically dispatches calls based on test results. The Hollatz analogy that language skills of agents can somehow be associated with code lots is wrong for a plurality of reasons provided herebefore. In addition, Applicant has taken issue with the Examiner's analysis relating to dependant claims 85–86, 88, 91–93, 97–98, and 101 for myriad reasons articulated fully herebefore. For example, no rejection is given for any of the elements or limitations found in claim 93.

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment to Deposit Account No. 22-0259 or any payment in connection with this communication, including any fees for extension of time, that may be required. The Examiner is invited to call the undersigned if such action might expedite the prosecution of this application.

Respectfully submitted,

Dated: _____ July 25, 2007 _____   By: _____

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